

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
COMMONWEALTH OF MASSACHUSETTS,)	
)	CIVIL ACTION
Plaintiff-Intervenor,)	NO. 89-2206-WGY
)	
v.)	
)	
CITY OF GLOUCESTER, MASSACHUSETTS,)	
)	
Defendant.)	
)	

MODIFIED CONSENT DECREE

WHEREAS, the plaintiff, United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed a complaint herein on October 3, 1989 (the "Complaint"), alleging that the defendant, the City of Gloucester, Massachusetts ("the City") was in ongoing violation of section 301, 33 U.S.C. § 1311, of the Clean Water Act, 33 U.S.C. §§ 1251 et seq. (the "Act"), and the provisions of National Pollutant Discharge Elimination System("NPDES") Permit Number MA0100625 issued to the City by the U.S. Environmental Protection Agency ("EPA") on June 26, 1985, pursuant to section 402 of the Act, 33 U.S.C. § 1342;

WHEREAS, the plaintiff-intervenor, the Commonwealth of Massachusetts, filed a complaint in intervention (the "Complaint In Intervention") joining the allegations of the United States and further alleging that the City was in ongoing violation of the

Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 et seq. (the “Massachusetts Act”) and State Permit Number M-83 issued by the Department of Environmental Quality Engineering of the Commonwealth of Massachusetts, now known as the Department of Environmental Protection (“DEP”), under the Massachusetts Act (said federal and State permits having been jointly issued as a single permit);

WHEREAS, the City is a political subdivision of the Commonwealth of Massachusetts, duly organized and existing under the laws of the Commonwealth, and owns and operates wastewater and sewer works systems, including but not limited to the publicly owned treatment works (the “POTW”) located at Essex Avenue, West of Western Avenue, in Gloucester, Massachusetts and certain combined sewer overflows (“CSOs”) and outfalls;

WHEREAS, the Complaint and Complaint In Intervention (jointly, the “Complaints”) allege that the City was in violation of the CWA and the Massachusetts Act by unlawfully discharging pollutants from various outfalls and by failing to take appropriate measures to contain the discharge of pollutants. With regard to CSOs in particular, the Complaint and Complaint In Intervention alleged that Gloucester discharged pollutants from CSO outfalls in violation of the City’s NPDES Permit, and that these discharges caused or contributed to violations of water quality standards;

WHEREAS, on or about April 7, 1992, this Court entered a Consent Decree signed by the Court and authorized representatives of the United States, the Commonwealth, and the City, which Consent Decree was amended in April 1993;

WHEREAS, the Consent Decree required the City to, among other things, perform treatment plant and other sewer system upgrades; improve sewer system operations, maintenance, and staffing; implement an approved pretreatment program; address CSOs

and other unauthorized outfall discharges; and implement an approved program to eliminate known sources of excessive infiltration and inflow (“I/I”) to the sewer system. The Consent Decree also required the City to pay a civil penalty for its past violations of the CWA and the Massachusetts Act;

WHEREAS, although the City has completed certain required sewer system upgrades and otherwise has performed certain of its obligations under the Consent Decree, the United States and the Commonwealth allege that the City has failed adequately to address, among other things, CSO discharges to the City’s harbor, excessive flow into the system as a result of illegal connections and other I/I sources, and discharges of chlorine residuals from its treatment plant;

WHEREAS, although the City’s NPDES permit requires that CSO discharges from the City’s CSO outfalls not cause violations of federal or state water quality standards, since entry of the Consent Decree in 1992 the City has continued repeatedly to discharge pollutants through CSO outfalls owned and operated by the City to Gloucester Harbor and Pavilion Beach, a public recreation area, in violation of the City’s NPDES permit, the CWA, and the Massachusetts Act;

WHEREAS, the City has been and is in violation of certain provisions of the Act, the Massachusetts Act, conditions of its state and federal discharge permit, and the Consent Decree; and

WHEREAS, the parties agree, without adjudication of facts or law, that settlement of this matter is in the public interest and that entry of this Modified Consent Decree without further litigation is an appropriate way to resolve the dispute, and the parties consent to the entry of this Modified Consent Decree;

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed as follows:

I. STATEMENT OF CLAIM

1. The Complaints filed herein state claims upon which relief can be granted against the defendant pursuant to sections 301 and 309 of the Act, 33 U.S.C. §§ 1311 and 1319, and pursuant to section 42 of the Massachusetts Act, M.G.L. c. 21, § 42.

II. JURISDICTION AND VENUE

2. The Court has personal jurisdiction over the parties to this Modified Consent Decree. The Court also has jurisdiction over the subject matter of this action pursuant to section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345 and 1355, and under the doctrine of pendent jurisdiction. This District is the proper venue for this action pursuant to 28 U.S.C. § 1391(b) and 33 U.S.C. § 1319(b). The City has waived all objections it might have raised to either such jurisdiction or venue.

III. APPLICABILITY

3. This Modified Consent Decree supersedes the Consent Decree previously entered, and subsequently amended, in this matter. The provisions of this Modified Consent Decree shall apply to and be binding upon the City, its officers, agents, servants, employees, successors, assigns and all persons, firms, and corporations acting in active concert or participation with them related to the performance of this Modified Consent Decree. The City shall give notice and a true copy of this Modified Consent Decree to any of its successors in interest no later than thirty (30) days prior to any transfer of ownership, operation or other interest in the POTW and/or any CSO. Simultaneously with such notice, the City shall notify EPA Region I, the United States Attorney for the District of Massachusetts, DEP and the Environmental Protection Division of the Massachusetts Department of the Attorney General, at the addresses specified in paragraph 31 of this Modified Consent Decree, of such successor in interest and that such

notice and copy has been given by the City. The City shall condition the transfer of ownership, operation, other interest, or any contract related to the performance of this Modified Consent Decree upon the successful execution of the terms and conditions of this Modified Consent Decree.

IV. OBJECTIVES

4. It is the express purpose of the parties in entering into this Modified Consent Decree to further the objectives of the Act and the Massachusetts Act, as set forth at section 101 of the Act, 33 U.S.C. § 1251, and M.G.L. c. 21, §§ 26 et seq. of the Massachusetts Act, respectively. All plans, studies, construction, remedial maintenance, monitoring programs, enforcement programs, and other obligations in this Modified Consent Decree or resulting from the activities required by this Modified Consent Decree shall have the objectives of causing the City's CSO discharges and the POTW to come into and remain in full compliance with the Act and the Massachusetts Act, including compliance with the terms and conditions of the City's state and federal NPDES permit, renewals or amendments to the permit, and the provisions of applicable federal and state laws and regulations governing discharges from the City's treatment plant.

V. DEFINITIONS

5. Unless otherwise specified, all terms in this Modified Consent Decree shall have the meanings set forth in the Act. For the purposes of this Modified Consent Decree, the terms set forth below shall be defined as follows:

Combined Sewer System (CSS) means a wastewater collection system owned by the state or a municipality which conveys sanitary wastewaters (from domestic, commercial, or industrial sources) and stormwater through a single-pipe system to a Publicly Owned Treatment Works (POTW) treatment plant.

Combined Sewer Overflow (CSO) means the discharge from a CSS at a point prior to the POTW treatment plant having the potential to function, in effect, as an overflow discharge for a combination of sewage and stormwater or groundwater,

including but not limited to those outfalls identified in the City of Gloucester's NPDES permit as outfalls 002, 004, 005, 006 and 006A.

Commence construction means to begin on-site physical construction work.

Complete construction as to CSO remediation work required hereunder means substantial completion of the separated sanitary and storm water collection system with the ability to accept design flows; complete construction as to chlorination improvement work required hereunder means substantial completion of facilities at the POTW treatment plant resulting in the POTW treatment plant coming into compliance with its NPDES permit limits for chlorine discharge in accordance with the requirements of this Modified Consent Decree.

Effluent limitation means any restriction imposed on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from the POTW.

Full implementation of a manual, plan, or program means that the subject endeavor has full staffing and full operational and maintenance support and that the manual, plan, or program is being performed as intended.

Sewer separation and separation of the collection system means construction of new sanitary sewer collection systems and/or storm drain systems, and redirection of sanitary waste water into the sanitary sewer collection system for conveyance to the City's Wastewater treatment plant so that only storm water is conveyed directly to surface waters. A system will not be deemed "separate" until waste water connections are removed from the storm drain system and infiltration and inflow sources have been removed from the sewer system.

VI. COMBINED SEWER OVERFLOWS

6. The City shall operate its treatment works and the total sewer system to minimize the discharge of pollutants from CSOs and to avoid bypasses.

7. Upon entry of this Modified Consent Decree, the City shall confirm that it has replaced the tide gate at the City's CSO outfall known as CSO 004 to prevent inflow to the combined sewer system there.

8. The City shall submit to EPA and DEP on the thirty-first day of March of each year a report on all tide gate and CSO structures/regulators inspections, maintenance and repairs during the past twelve months. The report shall indicate which

structures/regulators and tide gates were checked and when, the condition of each one, which ones need to be repaired, and the repair schedule.

9. By February 14, 2005, the City shall submit to DEP and EPA a Final Long-Term CSO Control Plan (the "FLTCP") developed in accordance with Exhibit A to this Consent Decree, that identifies projects that will result in the achievement, as soon as practicable and by no later than December 31, 2014, of state water quality standards and compliance with the City's NPDES permit, the CWA, and the Massachusetts Act. The FLTCP shall incorporate and build upon the projects and schedules required pursuant to paragraphs 12 - 26 of this Modified Consent Decree; shall provide CSO controls at the City's outfall known as 006A; and shall identify the highest feasible level of control for CSO discharges to Pavilion Beach and Gloucester Inner Harbor, and shall include both (i) a schedule acceptable to the plaintiffs for implementing these measures at the earliest practicable date; and (ii) a plan acceptable to the plaintiffs for post construction monitoring of CSO discharges to Pavilion Beach and Gloucester Inner Harbor. By July 1, 2005, an Environmental Notification Form (ENF) shall also be submitted along with the FLTCP to the Massachusetts Executive Office of Environmental Affairs MEPA Unit, pursuant to M.G.L. c. 30, §§ 61-62H, and the MEPA regulations, for public environmental review. The nature and extent of the projects required under paragraphs 12 - 26 of this Modified Consent Decree may be modified only upon the written consent of the DEP and EPA. At any time after submission of the FLTCP, any party may move the Court to incorporate into the Modified Consent Decree a proposed plan and schedule providing for the complete elimination of CSO discharges from one or more of the City's outfalls.

10. On or about February 17, 2004, the City submitted to DEP and EPA a draft CSO monitoring and high flow management plan (the "CSO Management Plan"), to provide a mechanism for monitoring and evaluating CSO regulators and outfalls to accurately quantify CSO activations and discharges and to maximize flows to the waste water treatment plant. The CSO Management Plan shall also include (i) a plan for quantifying and reporting CSO discharges from the City's active CSO outfalls; (ii) a plan to maximize flows to the POTW treatment plant so as to minimize CSO discharges and their impacts; and (iii) a public notification program, to advise the public on the CSO discharges and the potential health risks associated with them. This program shall include a mechanism for providing reasonable and timely notice to users of Pavillion Beach and the Inner Harbor when CSO discharges occur, and advise of their potential health risks. By June 1, 2005, the City shall submit to DEP and EPA a Final CSO Management Plan that responds to DEP and EPA comments on the Draft CSO Management Plan.

11. By June 15, 2005, the City shall begin implementing the final approved CSO Management Plan, and thereafter shall fully comply with the terms and schedules set forth in the final approved CSO Management Plan.

12. By October 15, 2005, the City shall submit final plans and specifications to DEP and EPA for the construction of the Washington Street Drain project as described in the City's Draft Combined Sewer Overflow Revised Long-Term Control Plan, dated April 2001 (the "Draft Revised LTCP").

13. By May 1, 2006, the City shall commence construction of the Washington Street Drain in accordance with the plans and specifications as approved by DEP and EPA.

14. By February 15, 2007, the City shall submit plans and specifications to DEP and EPA for sewer separation of the area known as the Lower 002 Area (Mansfield Street and Gould Court) as described in Chapter 7 of the Draft Revised LTCP.

15. By February 15, 2007, the City shall submit plans and specifications to DEP and EPA for sewer separation of the area known as the Upper 002 Area (Orchard Street, Upper Washington Street, Addison Street, Myrtle Square, and Sargent Street) as described in Chapter 7 of the Draft Revised LTCP.

16. By September 15, 2007, the City shall commence construction of sewer separation for the Lower 002 Area in accordance with the plans and specifications as approved by DEP and EPA.

17. By September 15, 2007, the City shall commence construction of sewer separation for the Upper 002 Area in accordance with the plans and specifications as approved by DEP and EPA.

18. By October 31, 2007, the City shall complete construction of the Washington Street Drain in accordance with the plans and specifications as approved by DEP and EPA.

19. By June 1, 2009, the City shall complete construction of sewer separation for both the Lower 002 Area and the Upper 002 Area in accordance with the plans and specifications for each as approved by DEP and EPA, and thereafter shall meet the levels of CSO control for each such area set forth in the FLTCP.

20. By October 15, 2009, the City shall submit plans and specifications to DEP and EPA for sewer separation of the 005 Area as described in Chapter 7 of the Draft Revised LTCP.

21. By May 1, 2010, the City shall commence construction of sewer separation for the 005 Area in accordance with the plans and specifications as approved by DEP and EPA.

22. By October 15, 2010, the City shall submit plans and specifications to DEP and EPA for sewer separation work for the 006 Area as described in Chapter 7 of the Draft Revised LTCP.

23. By June 30, 2011, the City shall complete construction of sewer separation for the 005 Area in accordance with the plans and specifications as approved by DEP and EPA, and thereafter shall meet the levels of CSO control for such area set forth in the FLTCP.

24. By May 1, 2011, the City shall commence construction of sewer separation for the 006 Area in accordance with the plans and specifications as approved by DEP and EPA.

25. By June 30, 2012, the City shall complete construction of sewer separation for the 006 Area in accordance with the plans and specifications as approved by DEP and EPA, and thereafter shall meet the levels of CSO control for such area set forth in the FLTCP.

26. As soon as practicable, and no later than December 31, 2014, the City shall complete construction of all projects required by the FLTCP.

VII. INFILTRATION AND INFLOW

27. On or about December 23, 2004, the City submitted to DEP and EPA for approval a plan to identify and remove public, commercial, and private infiltration and inflow sources to the sanitary sewer system, such as roof leaders and sump pumps (the "I/I Removal Plan"). The I/I Removal Plan shall include a summary of previous I/I

planning and actions taken by the City to eliminate I/I to the collection system, and shall include the City's recommendations and a schedule for further actions to address inflow and infiltration sources to the sewer system. The I/I Removal Plan shall be consistent with *DEP Guidelines for Performing Infiltration/Inflow Analysis and Sewer System Evaluation Surveys*, revised January 1993.

28. The City shall implement the I/I Removal Plan, and thereafter shall fully comply with the scope and schedule for the work as set forth in the approved I/I Removal Plan.

VIII. CHLORINATION IMPROVEMENT STUDY

29. The City shall by September 29, 2005, complete construction of facilities at the POTW treatment plant to meet NPDES limits on chlorine, and shall meet such limits consistently by December 31, 2005, and shall submit a report by December 31, 2005, to EPA and DEP demonstrating that such limits consistently are being met.

IX. REPORTING

30. On or before the twenty-fifth day of the calendar month following the month in which this Modified Consent Decree is entered, and continuing quarterly thereafter until termination of this Modified Consent Decree, the City shall submit in writing to EPA, the United States Attorney for the District of Massachusetts, DEP, and the Attorney General of the Commonwealth of Massachusetts, at the addresses specified in paragraph 31 below, a report detailing the status and progress of projects under this Modified Consent Decree. The report shall include a description of the compliance or noncompliance with the schedules set forth in (or developed or incorporated pursuant to) Parts VI through VIII, inclusive, a description of the work performed under those schedules during the preceding two months, and a projection of the work to be performed

under those schedules during the three month period to follow. Where there is noncompliance with a schedule referred to in this paragraph, the report shall include a statement of any corrective action taken or to be taken. Notification to EPA and DEP pursuant to this section of any anticipated delay shall not excuse the delay. The report shall also set forth the effluent limitation monitoring results from the POTW for the most recent monthly period. The report shall also contain an explanation of any violation of any applicable effluent limitation, including a statement of any corrective action taken or planned to be taken. The report shall contain a certification, signed by the City Engineer, stating that the information in or accompanying the report is true, accurate, and complete.

31. All submissions required by this Modified Consent Decree to be sent by the City to EPA or DEP shall be made in writing to the following addresses, respectively, unless the United States, or the Commonwealth gives the City written notice that another person has been designated to receive such report or notice:

TO EPA

George Harding
Water Technical Unit (SEW)
U.S. Environmental Protection Agency, Region I
One Congress Street
Boston, MA 02114-2023

Michael Wagner
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency, Region I
One Congress Street
Boston, MA 02114-2023

TO DEP

Richard Lehan
Office of General Counsel
Department of Environmental Protection
Northeast Regional Office
One Winter Street
Boston, MA 02108

David Ferris
Section Chief
Wastewater Management
Department of Environmental Protection
Northeast Regional Office
One Winter Street
Boston, MA 02108

Upon written request by the United States Attorney for the District of Massachusetts or the Attorney General of the Commonwealth, any submission(s) required to be submitted to EPA or DEP under this Modified Consent Decree shall also be submitted to the United States Attorney and/or the Attorney General at the following addresses, respectively, unless the United States or the Commonwealth gives the City written notice that another person has been designated to receive such report or notice:

TO THE UNITED STATES ATTORNEY

GEORGE B. HENDERSON, II
Assistant U.S. Attorney
John J. Moakley Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02110

TO THE ATTORNEY GENERAL OF THE COMMONWEALTH

I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
Massachusetts Attorney General's Office
One Ashburton Place, 18th Flr.
Boston, MA 02108

32. The aforementioned reporting requirements do not relieve the City of its obligation to submit any other reports or information required by the Act or the Massachusetts Act, the regulations promulgated under each Act, respectively, any applicable permit, or any local requirements.

X. FUNDING

33. Performance of the terms of this Modified Consent Decree by the City is not conditioned on the receipt of any federal or state grant funds. In addition, performance is not excused by the lack of any federal or state grant funds.

XI. FORCE MAJEURE

34. If the City, or any entity controlled by the City, including its contractors and consultants, fails to comply with any provision of this Modified Consent Decree, the City shall notify the United States Attorney, EPA, DEP and the Attorney General of the Commonwealth in writing (at the addresses specified in paragraph 31 above) within ten (10) days of such noncompliance. The notice shall describe in detail (1) the anticipated length of time the noncompliance may persist, (2) the precise cause or causes of the noncompliance, (3) the measures taken and to be taken by the City to prevent or minimize the noncompliance, and (4) the timetable by which those measures will be implemented. The City shall adopt all reasonable measures to avoid or minimize any noncompliance. The City shall also notify the persons and entities specified above in accordance with the requirements of this section within ten (10) days after the City has reason to believe that a situation has occurred that is likely to cause a failure to comply with any provision of this Decree. The City shall adopt all reasonable measures to avoid or minimize any such noncompliance. Failure by the City to comply with the notice requirements of this paragraph shall render paragraphs 35, 36 and 37 void and of no effect as to the particular incident involved, and shall constitute a waiver of the City's right to request an extension of time for its obligations based on the incident.

35. If all of the parties to this Modified Consent Decree agree that the City's failure to comply with a provision of this Decree has been or will be caused by

circumstances beyond the control of the City and any entity controlled by the City, including the City's consultants and contractors, and that the City or any such entity controlled by the City could not have foreseen and prevented such noncompliance, the parties shall stipulate in writing to an extension of time for the performance of the affected requirements of this Decree, not to exceed the amount of time lost due to the actual unavoidable delay resulting from such circumstances, and shall so inform the Court. Stipulated penalties shall not be due for the number of days of noncompliance caused by such circumstances.

36. If the parties are unable to agree whether the City's failure to comply with a provision of this Modified Consent Decree was caused by circumstances beyond the control of the City and any entity controlled by the City, including the City's consultants and contractors, or on the number of days of noncompliance that were caused by such circumstances, the matter may be submitted by any party to the Court for resolution. If the Court then determines that the failure to comply was caused by circumstances beyond the control of the City and any entity controlled by the City, including the City's consultants and contractors, and it is determined that the City or any entity controlled by the City could not have foreseen or prevented such noncompliance, the City shall be excused as to the failure to comply for the period of time the noncompliance continued due to such circumstances.

37. The City shall bear the burden of proving by clear and convincing evidence (1) that the noncompliance was caused by circumstances beyond the control of the City and any entity controlled by the City, including its contractors and consultants; (2) that the City or any entity controlled by the City could not have foreseen or prevented such violation; and (3) how many days of noncompliance were caused by such circumstances.

If the City fails to sustain its burden of proof under this paragraph, stipulated penalties shall be paid for each day of noncompliance beginning with the first day of such noncompliance.

38. Unanticipated or increased costs or expenses associated with the implementation of actions called for by this Modified Consent Decree and changed financial circumstances shall not, in any event, serve as the basis for changes in this Decree or extensions of time for the performance of the actions required by this Decree.

39. Compliance with any requirement of this Modified Consent Decree by itself shall not constitute compliance with any other requirement. An extension of one compliance date based on a particular incident shall not result in the extension of a subsequent compliance date or dates unless specifically stated otherwise. The City must make an individual showing of proof regarding each requirement for which an extension is sought.

40. The United States and the Commonwealth of Massachusetts reserve any and all legal and equitable remedies available to enforce the provisions of this Modified Consent Decree and applicable law.

XII. NOT A PERMIT

41. This Modified Consent Decree is not and shall not be interpreted to be a permit or a modification of the existing permits, issued pursuant to section 402 of the Clean Water Act, 33 U.S.C. § 1342, or section 43 of the Massachusetts Act, M.G.L. c. 21, § 43; nor shall it in any way relieve the City of its obligation to obtain permits and comply with the requirements of any applicable discharge permits or with any other federal or state law or regulation. The City shall comply with all conditions and effluent limitations in its current NPDES and State permit and any modification or renewal thereof while this

Modified Consent Decree remains in effect. Any new permit or renewal or modification of the existing permit must be complied with by the City in accordance with applicable federal and State laws and regulations.

XIII. PENALTY FOR PAST VIOLATIONS

42. The City shall pay a civil penalty in the amount of \$60,000 in satisfaction of the plaintiffs' civil penalty claims for the City's violation of the Act and the Massachusetts Act as alleged in the Complaints through the date of lodging of this Modified Consent Decree, to be paid as follows. Within fifteen (15) days after the date of entry of this Decree, \$50,000 shall be tendered to the United States Attorney for the District of Massachusetts in the form of a certified check payable to "Treasurer of the United States of America," and \$10,000 shall be tendered to the Attorney General of the Commonwealth in the form of a certified check payable to "Commonwealth of Massachusetts," with the balance of the state's share of the civil penalty being mitigated pursuant to the supplemental environmental project ("SEP") provisions in paragraphs 43 - 54, below. In the event of failure to make timely payment, the City shall pay interest in accordance with the statutory judgment interest rate specified in 28 U.S.C. § 1961 from the time the payment is due until such payment is made. Upon payment by the City of the civil penalty in compliance with this paragraph, and the completion of the SEP pursuant to paragraphs 43 - 54 below, the United States and the Commonwealth release and waive any penalties other than those agreed to in this Modified Consent Decree for violations of the Act or the Massachusetts Act that occurred prior to the date of entry of this Modified Consent Decree and are alleged in the Complaints.

XIV. SUPPLEMENTAL ENVIRONMENTAL PROJECT

43. In partial mitigation of the claims of the Commonwealth of Massachusetts herein, Gloucester shall design and perform a public outreach and educational campaign Supplemental Environmental Project in accordance with the Scope of Work contained in Exhibit B. Exhibit B is hereby made a part of this consent decree. The SEP will result in the City's disseminating information to local residents, businesses, and other stakeholders regarding wastewater management in Gloucester, and is intended to increase the public's awareness of, and participation in, efforts for addressing the City's wastewater management issues.

44. Gloucester shall complete the SEP according to the schedule set forth in Exhibit B, attached hereto.

45. The total expenditure for the SEP shall be at least \$40,000.

46. Until the time the public outreach and education campaign pursuant to the SEP is completed, and a SEP Completion Report is submitted for the SEP pursuant to paragraph 47 below, each Quarterly Report submitted pursuant to paragraph 47 below shall contain a narrative description of the SEP activities undertaken to date, an itemization (with copies of supporting documentation) of costs incurred on the SEP, and a report of any difficulties or delays in the implementation of the SEP.

47. Gloucester shall submit a SEP Completion Report for the SEP to DEP at the time of the next Quarterly Report following the completion of the SEP. The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. A description of any implementation problems encountered and the solutions thereto;

c. Itemized costs; in itemizing its costs, Gloucester shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made. For costs incurred in-house, those costs shall be Gloucester’s actual costs as determined in accordance with Gloucester’s standard cost accounting principles;

d. Certification that the SEP has been fully implemented pursuant to the provisions of this Modified Consent Decree;

e. A description of the environmental benefits resulting from implementation of the SEP, including an account of who received information pursuant to the SEP and what information was received; and an analysis of the direct public action that may be attributable to the information disseminated pursuant to the SEP.

48. After receipt of the SEP Completion Report described in the preceding paragraph, DEP will, in writing, either (i) indicate that DEP concludes that the SEP has been completed satisfactorily; (ii) determine that the SEP has not been completed satisfactorily and seek stipulated penalties in accordance with paragraph 58 below; or (iii) notify Gloucester of any deficiencies in the SEP Completion Report or the SEP and specify a reasonable schedule for curing such deficiencies. If DEP notifies Gloucester

pursuant to clause (iii) above that the SEP Completion Report is deficient, but DEP has not yet made a final determination about the adequacy of SEP completion itself, Gloucester shall, within 30 days of receipt of such notice, cure any deficiencies in the SEP Completion Report. If DEP notifies Gloucester pursuant to clause (iii) above of deficiencies in the performance of the SEP, Gloucester shall cure the deficiencies in accordance with the schedule specified by DEP. For purposes of this Paragraph, the SEP shall be considered “satisfactorily” completed if performed in accordance with Exhibit B and the applicable provisions of the Modified Consent Decree.

49. Failure to submit any report required by paragraph 47 above, or cure any deficiencies in accordance with paragraph 48 above, shall be deemed a violation of this Modified Consent Decree and Gloucester shall be liable for stipulated penalties pursuant to paragraph 58 below.

50. Gloucester shall retain true and accurate copies of all research and data that the City relies on for interim reporting and for the SEP Completion Report, and shall provide such information to DEP within 10 days of DEP’s request for such information.

51. Gloucester hereby certifies that the SEP is not required under any other state, local or federal law or regulation and that the SEP is not to be implemented as a consequence of another agreement to which Gloucester is a party. Gloucester also certifies that it has not negotiated, is not presently negotiating, and will not in the future negotiate to initiate or complete the SEP in response to any other local, state or federal enforcement action or in order to receive a grant from any entity.

52. Gloucester hereby agrees that DEP may inspect all records maintained by the City relating to the City’s obligations to design and perform the public outreach and educational campaign SEP, and the City shall make all such records available to DEP for

inspection and copying without undue delay upon DEP's written request for production of such records.

53. Gloucester hereby agrees that any written public statement or oral statement made on behalf of the City making reference to the SEP, shall include the following language: "This Project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency and the Massachusetts Department of Environmental Protection in which the agencies alleged violations of the federal Clean Water Act and the state Clean Waters Act."

54. This Modified Consent Decree shall not relieve Gloucester or any other entity of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA or DEP approval of the representations made by or on behalf of Gloucester in connection with the SEP undertaken pursuant to this Modified Consent Decree.

XV. STIPULATED PENALTIES

55. Failure by the City to comply with any requirement in this Modified Consent Decree shall obligate the City to pay stipulated civil penalties as follows:

a. For each day that City is late in submitting to EPA or DEP any report, plan, or draft of any of the foregoing required under this Decree:

1st day to 7th day	\$100 per day per submission
8th day to 30th day	\$500 per day per submission
Each day beyond the 30th day	\$750 per day per submission

For purposes of this paragraph the date of mailing shall constitute the date of submission, provided that proof of such date of mailing is supported by competent evidence.

b. Except as provided elsewhere in this paragraph, for each day of violation by the City of each general condition of its NPDES permit, and for each day that the City is late in conducting any testing, monitoring, or inspection required under (i) this Modified Consent Decree, (ii) any plan, scope of work, strategy, or program implemented pursuant to this Modified Consent Decree, or (iii) the City's NPDES permit:

1st day to 7th day	\$100 per day per violation
8th day to 30th day	\$250 per day per violation
Each day beyond 30th day	\$500 per day per violation

c. For each violation of any compliance schedule set forth in or developed pursuant to this Modified Consent Decree, or any draft or final CSO Management Plan, including, without limitation, the CSO discharge notification requirements therein, or any I/I Removal required pursuant to paragraphs 10, 27, or 28 of this Modified Consent Decree:

1st day to 30th day	\$500 per day
31st to 60th day	\$1,000 per day
61st to 90th day	\$1,500 per day
Each day beyond 90th day	\$2,000 per day

d. For each violation by the City of any daily maximum discharge limitation (other than for chlorine or pH) set forth in the City's NPDES permit as in effect at the time of the discharge:

First 3 violations in a calendar month	\$300 per day
Subsequent violations in a calendar month	\$600 per day

e. For each violation by the City of any daily maximum discharge limitation for chlorine after August 1, 2004, or minimum or maximum discharge limitation for pH, set forth in the City's NPDES permit as in effect at the time of the discharge, but not including the first 5 violations:

The sixth through ninth violations in a calendar month	\$500 per day
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Subsequent violations in
a calendar month

\$750 per day

Notwithstanding the foregoing, in the case of any violation of a discharge limitation for pH, penalties shall be due under this paragraph only if the level of pH is less than 6.0 or more than 8.5.

f. For each violation by the City of any average weekly discharge limitation set forth in the City's NPDES permit as in effect at the time of the discharge:

First 15 violations in a
calendar year

\$1,000 per week

Subsequent violations in
a calendar year

\$1,500 per week

g. For each violation by the City of any average monthly discharge limitation set forth in the City's NPDES permit as in effect at the time of the discharge:

First 3 violations in a
calendar year

\$1,000 per month

Subsequent violations in
a calendar year

\$2,000 per month

h. In the event any discharges by the City would result in stipulated penalties under two or more of the subparagraphs (d), (f) and (g) above for the same discharges of the same pollutant, the City shall be obligated to pay stipulated penalties only under that subparagraph (d), (f) or (g) which results in the highest penalty with respect to such discharges.

56. Stipulated penalties shall be paid without demand on or before the 15th day of the month following that in which the violation(s) occurred. The payments shall be divided into two equal certified checks, one payable to "Treasurer of the United States of America" and tendered to the United States Attorney for the District of Massachusetts, and the other payable to "Commonwealth of Massachusetts" and tendered to the Attorney General of the Commonwealth, at the addresses set forth in paragraph 31, above. Each such check shall be accompanied by a letter describing the basis for each penalty. Copies of all such letters shall be mailed concurrently to EPA and DEP. If the City fails to pay in

accordance with the provisions of this paragraph any stipulated penalty owed under the terms of this Modified Consent Decree, the United States and the Commonwealth shall be entitled to recover all documented costs actually incurred in collecting such penalty, including attorneys' fees, together with interest on such unpaid stipulated penalty at the statutory judgment interest rate provided for in 28 U.S.C. § 1961 which is in effect on the date of entry of this Consent Decree, accruing from the time such penalty is owed; provided, however, that the United States and the Commonwealth shall not be entitled to costs or attorneys' fees if the Court determines that no stipulated penalty is due. Nothing in this paragraph shall be construed to limit the United States or the Commonwealth in seeking any remedy or civil or criminal penalty otherwise provided by law (1) for any misrepresentation or material omission by the City in any report or other submission required by this Decree or (2) for failure to pay stipulated penalties.

57. The stipulated penalties herein shall be in addition to the civil penalty for past violations set forth in paragraph 42 of this Modified Consent Decree and other remedies or sanctions available to the plaintiffs by reason of the City's failure to comply with the requirements of this Consent Decree, the City's discharge permit, or the Act or Massachusetts Act.

XVI. SEP STIPULATED PENALTIES

58. In the event that Gloucester fails to comply with any of the terms or provisions of this consent decree relating to the performance of the SEP described in paragraphs 43 - 54 above and/or to the extent that the actual expenditures for the SEPs do not equal or exceed the projected costs of the SEP described in paragraph 45 above, Gloucester shall be liable to the Commonwealth of Massachusetts for stipulated penalties according to the provisions set forth below:

i. If Gloucester's total expenditures for the completed SEP are less than \$40,000, Gloucester shall pay a stipulated penalty equal to the difference between the actual cost of the SEP and \$40,000, plus interest on such stipulated penalty accruing from the date of entry of this decree at the rate provided for in M.G.L. c. 231, § 6B. Any penalty payments made by Gloucester pursuant to subparagraph ii below shall be deducted from the penalty due under this subparagraph.

ii. Independent of subparagraph 58(i) above, in the event that the SEP is not designed and performed in accordance with paragraph 43 and Exhibit B hereto, Gloucester shall pay a stipulated penalty equal to the projected SEP costs for the part of the SEP not performed, plus interest on such stipulated penalty accruing from the date of entry of this decree at the rate provided for in M.G.L. c. 231, § 6B. When evaluating whether to reduce the amount of stipulated penalty due, DEP may take into account the extent to which a SEP has been completed and is being performed as contemplated herein and Gloucester's expenditures for the SEP. Gloucester shall pay any such additional penalty to the Commonwealth of Massachusetts according to the procedures in paragraph 59 below within 30 days of demand.

iii. Notwithstanding subparagraph 58(ii) above, if the SEP is not completed in accordance with paragraphs 43 - 54 above, but DEP determines that Gloucester: a) made good faith and timely efforts to complete the SEP; and b) certifies, with supporting documentation, that at least 100 percent of the amount of money which was required to be spent was expended on the SEP, Gloucester shall not be liable for any stipulated penalty.

iv. Gloucester shall pay a stipulated penalty to the Commonwealth of Massachusetts of \$500 for each day that it is late in completing the SEP described in Exhibit B. In addition, if Gloucester is more than six months late in completing the SEP, the payment provisions contained in subparagraph e.ii above shall apply.

v. For failure to submit the SEP Completion Report required by paragraph 47 above or for failure to cure deficiencies as required by paragraph 48 above, Gloucester shall pay a stipulated penalty to the Commonwealth of Massachusetts in the amount of \$1,000 for each day that Gloucester is late in submitting the report or curing the deficiencies.

vi. The determination of whether Gloucester has made a good faith, timely effort to implement the SEP shall be in the sole discretion of DEP.

59. The SEP Stipulated Penalties pursuant to paragraph 58 above, shall be paid without demand on or before the 15th day of the month following that in which the violation(s) occurred. The payments shall be payable to "Commonwealth of Massachusetts" and tendered to the Attorney General of the Commonwealth, at the

address set forth in paragraph 31, above. Each such check shall be accompanied by a letter describing the basis for each penalty. Copies of all such letters shall be mailed concurrently to EPA and DEP. If the City fails to pay in accordance with the provisions of this paragraph any SEP Stipulated Penalties pursuant to paragraph 58 above, the Commonwealth shall be entitled to recover all documented costs actually incurred in collecting such penalty, including attorneys' fees, together with interest on such unpaid stipulated penalty at the statutory judgment interest rate provided for in M.G.L. c. 231, § 6B, which is in effect on the date of entry of this Consent Decree, accruing from the time such penalty is owed; provided, however, that the Commonwealth shall not be entitled to costs or attorneys' fees if the Court determines that no stipulated penalty is due. Nothing in this paragraph shall be construed to limit the Commonwealth in seeking any remedy or civil or criminal penalty otherwise provided by law (1) for any misrepresentation or material omission by the City in any report or other submission required by this decree concerning the SEP; or (2) for failure to pay SEP stipulated penalties pursuant to paragraph 58 when due.

60. The SEP stipulated penalties pursuant to paragraph 58 above shall be in addition to the civil penalty for past violations set forth in paragraph 42 of this Modified Consent Decree; the stipulated penalties pursuant to paragraph 55 above, and other remedies or sanctions available to the plaintiffs by reason of the City's failure to comply with the requirements of this Consent Decree, the City's discharge permit, or the Act or Massachusetts Act.

XVII. RIGHT OF ENTRY

61. Until termination of this Modified Consent Decree, EPA, DEP, and their contractors, consultants, and attorneys, shall have the authority to enter any property

and/or facility covered by this Modified Consent Decree at all times, upon proper presentation of credentials, for the purposes of monitoring the progress of activities required by this Decree; verifying any data or information submitted in accordance with the terms of this Decree; obtaining any samples or, on request, splits of any samples taken by the City or its consultants; and assessing the City's compliance with this Decree. This provision in no way limits or otherwise affects any right of entry held by the United States or the Commonwealth pursuant to applicable federal or state laws, regulations, or permits.

XVIII. OBLIGATION TO COMPLY

62. The pendency of any proceeding concerning the issuance, reissuance, or modification of any discharge permit shall neither affect nor postpone the City's duties and liabilities as set forth herein. Further, the United States and the Commonwealth do not, by their consent to the entry of this Modified Consent Decree, warrant or aver in any manner that complete compliance by the City with the terms of this Decree will result in compliance with the provisions of the Act, the Massachusetts Act, applicable regulations, or the City's NPDES permit. Notwithstanding any other provisions of this Consent Decree, the obligation to achieve and maintain complete compliance with the terms, provisions, and requirements of this Consent Decree, the Act, the Massachusetts Act, and applicable regulations and permits rests solely with the City.

XIV. NON-WAIVER PROVISION

63. The United States and the Commonwealth of Massachusetts do not waive any rights or remedies available to them for any violation by the City of the Act or Massachusetts Act and associated regulations or permit conditions following completion of the requirements of this Modified Consent Decree. Notwithstanding the foregoing, this Modified Consent Decree in no way affects the ability of the United States or the

Commonwealth to bring an action for further relief pursuant to federal or state law for any violations of the City's discharge permit (as now in effect or as may subsequently be issued), occurring after the date of lodging of this Modified Consent Decree or for any violations not specifically the subject of this Modified Consent Decree. This Consent Decree in no way affects or relieves the City of responsibility to comply with any other federal, state, or local laws or regulations.

XX. EFFECT ON THIRD PARTIES

64. This Modified Consent Decree does not limit or affect the rights of the City, the United States, or the Commonwealth as against any third parties. Nor shall this Consent Decree operate to release, waive, limit or impair in any way the claims, rights, remedies or defenses of the United States, the Commonwealth, or the City against any person or entity not a party hereto. This Consent Decree shall not create in or afford to persons or entities not parties hereto any rights against the United States, the Commonwealth, or the City not otherwise available to them under applicable laws.

XXI. COSTS OF SUIT

65. Each party shall bear its own costs and attorneys' fees in this action. Should the City subsequently be determined to have violated the terms and conditions of this Modified Consent Decree, including failure to pay in a timely manner any stipulated penalty that may come due, then the City shall be liable to the plaintiffs for all documented costs, including attorneys' fees, actually incurred by the plaintiffs in any actions against the City for noncompliance with this Modified Consent Decree, or incurred by the plaintiffs in collecting any penalty due under this Modified Consent Decree.

XXII. PUBLIC COMMENT

66. The parties agree and acknowledge that final approval by the United States and entry of this Modified Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice and an opportunity for public comment. The City and the Commonwealth consent to the entry of this Modified Consent Decree without further notice. The United States consents to the entry of this Modified Consent Decree, subject to publication of notice thereof in the Federal Register, pursuant to 28 C.F.R. § 50.7 and an opportunity to consider comments thereon.

XXIII. SEVERABILITY

67. The provisions of this Modified Consent Decree shall be severable and should any provision be declared by a court of competent jurisdiction to be inconsistent with federal law, and therefore unenforceable, the remaining provisions of this Modified Consent Decree shall remain in full force and effect. In the event any enforcement obligation of the City under this Modified Consent Decree is declared by a court of competent jurisdiction to be inconsistent with federal or state law, any failure by the City to comply with such obligation shall not be deemed a violation of this Modified Consent Decree.

XXIV. MODIFICATION

68. This Modified Consent Decree shall not be modified except by the written consent of all parties to this Modified Consent Decree or by the Court.

XXV. RETENTION OF JURISDICTION

69. The Court shall retain jurisdiction to enforce, including by contempt order, the terms and conditions of this Modified Consent Decree, to make modifications necessary to effectuate compliance with the Act, this Modified Consent Decree,

applicable discharge permits, the Massachusetts Act, and any applicable federal or state regulations, and to resolve all disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Modified Consent Decree.

XXVI. TERMINATION OF DECREE

70. When the City has paid all outstanding penalties, has completed all remedial measures specified herein and has achieved compliance with all requirements of this Modified Consent Decree continuously for a period of one year, then any party may move for termination of this Modified Consent Decree.

The Court finds that this Consent Decree is a reasonable and fair settlement and adequately protects the public interest in accordance with the Act and the Massachusetts Act. Dated and entered this _____ day of _____, 2005.

WILLIAM G. YOUNG
Chief Judge, United States District Court

Consented To:

FOR THE UNITED STATES OF AMERICA:

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

6/29/05
Dated:

MICHAEL J. SULLIVAN
United States Attorney

By: _____

GEORGE B. HENDERSON, II
Assistant United States Attorney
John J. Moakley Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02110

Dated

Walker B. Smith, Director
Office of Regulatory Enforcement
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dated

Stephen S. Perkins
Director, Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
One Congress Street
Boston, MA 02114-2023

Dated

FOR THE COMMONWEALTH OF MASSACHUSETTS:

THOMAS F. REILLY
Attorney General

I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
One Ashburton Place, 18th Flr.
Boston, MA 02108

Dated

FOR THE CITY OF GLOUCESTER;

John Bell, Mayor
City Hall
Dale Avenue
Gloucester, MA 01930

Dated

May 27, 2005

Linda Thomas-Lowe
General Counsel
City of Gloucester
Law Department, City Hall
Dale Avenue
Gloucester, MA 01930

Dated

May 27, 2005

EXHIBIT A

LONG TERM CONTROL PLAN FOR CITY OF GLOUCESTER, MASSACHUSETTS

1. This Long Term Control Plan shall be designed to accomplish the requirements set forth in Paragraph 9 of the Consent Decree.
2. The LTCP shall include, at a minimum, the elements described below.
3. System Characterization. The purpose of the system characterization shall be to support the modeling and alternative evaluation efforts described in Paragraphs 4 through 6, below. The System characterization must include the following:
 - (a) A description of the physical characteristics and attributes of Gloucester's sewer system tributary its publicly-owned wastewater treatment plant. The description shall be compiled from existing records with field confirmation of pipe and appurtenance characteristics. If necessary, data shall be collected to augment existing records to produce a complete and accurate description of those portions of the system to be modeled. Pipe characteristics shall include diameter, shape, length, slope, elevation and interior surface condition (i.e., representative friction coefficients). Appurtenance characteristics shall include shape, size, elevation, interior condition and capacity as appropriate.
 - (b) A description of the collection system. The description shall include a schematic of the collection system, including all pipes above a diameter of eight inches, the direction of flow in these pipes, their material of construction where information presently exists, all pump stations and force mains, all overflow points, regulators, and other control structures, and all permitted discharge points.
 - (c) A description of how the wastewater collection and treatment systems responds to a range of precipitation events by identifying the frequency and volumes of overflow discharged from each discharge point.
4. Collection System Model. The City of Gloucester shall develop a collection system model as to aid in the identification of a range of potential water pollution treatment/control alternatives.
 - (a) At a minimum, the Hydraulic Model and analysis shall be capable of predicting in sewers and force mains:
 - (i) volume of wastewater flow, under both dry and wet conditions, in the force mains and major gravity lines;
 - (ii) hydraulic pressure or hydraulic grade line of wastewater at any point in force mains and gravity sewer lines;

- (iii) flow capacity of each pump station;
- (iv) the flow capacity of all gravity sewer lines;
- (v) the peak flows during wet weather and dry weather conditions for each pump station and gravity sewer lines;
- (vi) the likelihood, location, duration and volume of discharge from each discharge location for a range of precipitation events (of varying durations and return frequencies);
- (vii) wet weather flows from tributary separate sewer areas, including estimating wastewater flow, and precipitation-induced infiltration and inflow ("I/I"); this subparagraph (vii) shall not be construed to require a Sanitary Sewer Evaluation Study ("SSES"); and
- (viii) predicting the peak instantaneous and sustained flows for a variety of storm events (of varying durations and return frequencies).

5. Water Quality Monitoring. Gloucester shall conduct water quality modeling to identify the impact of overflow discharges to Pavillion Beach and Gloucester Harbor under a range of wet weather events. This monitoring shall provide a basis for assessing water improvements to be attained from identified alternatives.

6. Alternatives Evaluation. Gloucester shall identify, screen, and develop and evaluate alternatives which shall provide for measures necessary to ensure that CSO discharges from all CSO discharge outfalls comply with the technology based and water quality based requirements of the CWA, state law and regulation, and Gloucester's NPDES permit. At a minimum, the alternatives evaluation shall perform the following activities:

(a) Give highest priority to controlling overflows to sensitive areas. Sensitive areas, as determined by the NPDES authority in coordination with state and federal agencies, as appropriate, include but are not limited to designated Outstanding National Resource Waters, National Marine Sanctuaries, waters with threatened or endangered species and their habitat, waters with primary contact recreation, public drinking water intakes or their designated protection areas, and shellfish beds. For such areas, the alternative remedies identified under this LTCP should:

- (i) prohibit new or significantly increased overflows;
- (ii) eliminate or relocate overflows that discharge to sensitive areas wherever technically feasible and economically reasonable, except where

elimination or relocation would provide less environmental protection than additional treatment; and

(iii) where elimination or relocation is not physically possible and economically achievable, or would provide less environmental protection than additional treatment, provide the level of treatment for remaining overflows deemed necessary to meet WQS for full protection of existing and designated uses. In any event, the level of control should not be less than that described in the Evaluation of Alternatives below.

(b) Develop goals and objectives for CSO control consistent with control needs identified through the water quality modeling and water quality impact analysis and with water uses for the Gloucester Inner and Outer Harbors.

(c) Gloucester shall screen an appropriate range of technologies for eliminating, reducing, or treating CSO discharges, including an evaluation of varying levels of control for each alternative including elimination and alternatives that will reduce the number of untreated CSOs down to a range of overflows per CSO outfall per year (such as 0, 1 to 3, 4 to 7, and 8 to 12). This preliminary screening Summary shall consider and summarize various technologies, including but not limited to:

- (i) no action;
- (ii) partial separation of various portions of the combined sewer system;
- (iii) installation of various sizes of storage or equalization basins at the Gloucester facilities and/or in the sewer system;
- (iv) construction of high rate solids removal facilities capable of providing the equivalent of primary treatment;
- (v) construction of new intercepting sewers from the sewer system to the facilities;
- (vi) construction of facilities for providing disinfection (and dechlorination, if necessary) of CSO charges
- (vii) construction of facilities for removing floatables from CSO discharges;
- (viii) construction of relief sewers;
- (ix) removal of storm water sources (such as roof and driveway drains) from

the combined sewer system. This preliminary screening shall result in the identification of an appropriate list of technologies for further evaluation.

(d) Detailed development and evaluation of system-wide alternatives based on the technologies advanced from preliminary screening or combinations of these technologies. The technologies advanced from preliminary screening will be applied to develop system-wide CSO control alternatives. The detailed evaluation of alternatives shall consider the costs, effectiveness (in terms of overflow volume reduction, pollutant loading reductions, etc.) and the water quality improvements of the appropriate system-wide alternatives, including a comparison of the costs per unit of measure (in mass) of pollutants removed from the discharge for each of the alternatives that are being considered. The detailed evaluation shall be performed utilizing the guidance presented in "alternatives analyses" portion of U.S. EPA's "Combined Sewer Overflows Guidance for Long-Term Control Plan." Priority shall be given to alternatives which maximize treatment at the existing POTW. In performing the evaluation, Gloucester shall use the results of the Monitoring Program, and the hydraulic model and water quality model developed under the Modeling Program. The City shall submit its detailed evaluation of alternatives to the EPA and MADEP for approval.

(e) Evaluation of Gloucester's financial capability to fund the selected alternative or combination of alternatives, including an analysis of:

- (i) median household income/total project cost per household;
- (ii) per capita debt as a percent of full market property value;
- (iii) property tax revenues as a percent of full market property value;
- (iv) property tax collection rate;
- (v) unemployment rate;
- (vi) current and projected residential, commercial and industrial user fees;
- (vii) bond rating;
- (viii) bond capacity for the next twenty years;
- (ix) grant and/or loan eligibility and availability;
- (x) other viable funding mechanisms and sources of financing; and
- (xi) other factors which may be applicable to the financial evaluation.

7. Remedy Selection. The City shall submit to the EPA and MADEP for approval a description of the measures the City proposes as final CSO discharge control measures, including the construction of all sewer system and facility improvements, necessary to ensure compliance with water quality standards.

8. Remedy Implementation. Gloucester shall submit to the EPA and MADEP for approval an expeditious implementation schedule consistent with the financial capabilities documented in Paragraph 5(e) for the design, construction, and implementation of all proposed discharge control measures identified by Gloucester or approved by EPA and MADEP pursuant to Paragraph 6. If it is not feasible for Gloucester to design and construct all such measures simultaneously, the proposed implementation schedule may provide for implementation of the discharge control measures in a series of discrete projects, in which event the proposed implementation schedule shall include a detailed description of the scope of each proposed project and a phased schedule providing for the design and construction of each such project. Any such phased schedule shall take into account the relative importance of each discharge control measure, with highest priority being given to eliminating discharges to sensitive areas and to those projects which most reduce the discharge of pollutants. The implementation schedule shall specify critical milestones for each specific measure.

9. Post-Construction Monitoring. The LTCP shall include a post-construction monitoring program which will result in the assessment of the effectiveness of the selected and completed CSO discharge controls for CSO outfalls that are not eliminated. This program shall be consistent with the guidance "Combined Sewer Overflows Guidance for Long-Term Control Plan."

10. Public Participation. The City shall employ a public participation process that ensures that the affected public is actively involved in the selection of appropriate CSO controls. The public shall be kept informed of information including, but not limited to, water quality goals, CSO control goals, the types of control alternatives available and being considered to meet CSO control goals, and the process of evaluating various CSO control alternatives. The LTCP shall detail the process by which the public will be provided an opportunity to participate in the development of the Long-Term Control Plan.

11. All data, reports, plans, schedules, or any other documents to be submitted pursuant to this Exhibit A shall be submitted to the EPA and MADEP for approval.

Exhibit B

City of Gloucester Department of Public Works

Public Outreach and Educational Campaign Scope of Work

May 18, 2005

Task 1 Campaign Development

- Meet one-on-one with key management staff to gather insights into desired goals of campaign, and generate list of existing City CSO/SSO/I&I projects to be included under the campaign, including contacts for information related to those projects.
- Determine opportunities for the most effective information dissemination methods to reach local citizens with the educational materials and to connect them to the various outreach elements, such as the website, community meetings, etc. This research and meeting with management staff will determine the most cost-effective approach to achieving the desired goals for public education, and will consider methods such as direct mailings, cable TV, other media, etc.
- Develop a campaign slogan and common logo to create identity for the City's CSO/SSO/I&I projects included under the campaign's "umbrella."
- Draft a Campaign Plan and submit for staff and DEP review by June 15, 2005.
- Finalize Campaign Plan, incorporating staff and DEP input and comments, and submit Final Campaign Plan to DEP by July 1, 2005. Final Campaign Plan shall include budget and schedule for all elements of the Plan.

Task 2 Project Web Site

- Develop broad-based educational web site (designed to match the look and feel of the City's existing website) intended to inform and educate local residents, businesses, schoolchildren/teachers, public officials, the media, and other identified stakeholders. The goal will be to increase the knowledge level of area citizens about CSO/SSO/I&I issues by providing clear and concise information. Under the "umbrella" of the common theme developed to tie the City's CSO/SSO/I&I projects together as one campaign, the website will be populated with existing information gathered from a variety of sources such as WEF, NEIWPCC, the City's consultants, and others, such as a map of CSO discharges and schedule for CSO abatement work and information on the potential health risks which exist following CSO discharges to Pavilion Beach. The website shall be developed and operational by July 15, 2005.
 - Develop email Q&A system through the website allowing citizens to generate questions related to CSO/SSO/I&I issues and have them automatically sent to appropriate City staff for response.
-

- Provide links from web site to other webpages relevant to the City and its ongoing CSO/SSO/I&I projects (for example, the CSO project webpage developed by the CSO consultant).
- Provide downloads of brochures, bill stuffers, flyers, or other existing materials, available as PDF files, emphasizing things homeowners should expect or should undertake as part of the effort to address CSO/SSO/I&I issues. Examples may include downspout disconnections and sump pump removals, pollution prevention programs, and programs to identify and remove illegal wastewater discharges to the stormdrain system.

Task 3 E-Updates

- Develop an educational newsletter to be delivered via email to interested citizens on a bi-monthly basis, to be initiated on July 15, 2005. Citizens will be made aware of the opportunity to sign up to receive the e-updates through announcements in all outreach materials (such as the PSAs, press releases, etc.). A master database of these email addresses will be collected and maintained.
- Noteworthy events and important CSO/SSO/I&I activities will be highlighted in special emails sent between regular e-updates.

Task 4 Communication Materials

- Create the following communication materials to connect citizens to the educational materials being made available under the “umbrella” campaign:
 - Written Public Service Announcements for posting on local cable television public access or “community calendar” programming
 - Press releases to local media
 - Articles in City newsletter
- Identify appropriate existing project materials to support the Campaign Plan, such as:
 - Bill stuffer
 - Fact sheets
 - Flyers
 - Websites
- Identify appropriate dissemination locations for hardcopy materials such as:
 - Public libraries
 - City hall
 - Government buildings

Task 5 Community Meetings

- Identify opportunities for, and periodically organize and conduct, community meetings to inform local citizens and facilitate an open dialogue between the City and the community about CSO/SSO/I&I issues
-

Task 6 Verbal Information Channels

- By June 15, 2005, develop an operational 24-hour information telephone hotline that citizens can call to get up-to-date information CSO/SSO/I&I issues.

Task 7 School Curriculum Programs

- Assist the City in identifying existing CSO/SSO/I&I issues curriculum materials for introduction into schools as a means to educate schoolchildren and their parents about the issues.
-